

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:10-CV-135-FL

NORTHERN CAROLINA SUPPORTED	)	
EMPLOYMENT; SENECA NICHOLSON;	)	
and ALAN PITTS,	)	
	)	
Plaintiffs,	)	ORDER
	)	
v.	)	
	)	
NORTH CAROLINA DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES, et al.,	)	
	)	
Defendants.	)	

This matter is before the court on plaintiffs' recent filings including that motion lodged on the docket at entry number 24 entitled "Motion To Stay Judgment In Order That Plaintiffs Be Allowed To Petition The Circuit Court Under Federal Rules of Appellate Procedure, Rule 21 For A Writ Of Prohibition Or Mandamus, Alternatively, Motion For Relief From Judgment Pursuant To Fed. R. Civ. Pro. 60(a) and (b) And Motion To Seal And Preserve The Record, Specifically The CD Filed With The Court On October 27, 2010." Also tendered was a compact disc or "CD", the contents of which have been printed by the Clerk of Court, and revealed as a document entitled "Plaintiffs' Memorandum Brief In Support Of Plaintiffs' Combined Motion For Immediate Scheduling Of A Hearing Or Telephone Conference On The Issue Of Pending Motion(s) For Emergency Preliminary Injunction For Monday, November 1st, 2010 At 10:00 AM, And Objection And Opposition To The Order And Memorandum And Recommendation Of The U.S. Magistrate Judge Date August 20, 2010 And Motion To Direct The Clerk To Issue Summons And Further

Direct That Service Be Effected By The United States Marshal's Service And Motion To Amend The Complaint Pursuant To Federal Rules Civil Procedure, Rule 15 And Motion To Seal Case Exhibits And A Portion Of This Record Identified Below.”<sup>1</sup>

On April 5, 2010, *pro se* plaintiffs moved for leave to proceed *in forma pauperis*, attaching a proposed complaint and a motion for emergency preliminary injunction to this initial filing. The motion for leave to proceed *in forma pauperis* was referred to the magistrate judge, who on May 3, 2010, informed plaintiffs of certain deficiencies in their applications. Plaintiffs amended their motions on May 11, 2010, and moved for leave to amend their proposed complaint. On August 21, 2010, the magistrate judge allowed both motions, and plaintiffs' proposed amended complaint was accepted for filing by the clerk.

As noted, the amended complaint sets forth a number of claims arising under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 et seq., the Civil Rights Act of 1866, 42 U.S.C. § 1981, the Civil Rights Act of 1871, 42 U.S.C. § 1983, Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., the Rehabilitation Act of 1973, 29 U.S.C. § 794, and state law. Plaintiffs Nicholson and Pitts are African-Americans who serve as the managers and sole shareholders of plaintiff North Carolina Supported Employment (“NCSE”), an organization providing occupational rehabilitation services and job placement for individuals with disabilities. Defendants are the North Carolina Department of Health and Human Services (“DHHS”), the Division of Vocation Rehabilitation within the Henderson Office of DHSS, and a number of state actors, many of whom are employed by DHSS at the Henderson Office. Again, the crux of

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<sup>1</sup> Where the Clerk of Court requests direction concerning manner of entry of this submission into the docket, the case manager shall take into the record the printed out material titled as noted above, and return the disc to plaintiffs who shall not submit further filings through compact disc or “CD” in this manner.

plaintiffs' complaint is that defendants have attempted to force NCSE out of business by refusing to refer clients to NCSE or make payments on invoices submitted by NCSE.


On June 3, 2010, plaintiffs filed a second motion for emergency preliminary injunction. On July 22, 2010, plaintiffs filed a motion to seal and to supplement the record. These motions were referred to the magistrate judge, who entered his M&R on August 21, 2010. As noted, the magistrate judge recommended dismissing plaintiffs' amended complaint under 28 U.S.C. § 1915(e)(2) and denying as moot the motion to seal. The magistrate judge found that plaintiffs' allegations invoking federal law failed to state claims on which relief could be granted, and recommended that the court decline to exercise jurisdiction over the accompanying state law claims.

Plaintiffs twice moved for and received extensions of time to object to the M&R, but did not file objections within the time allotted. However, on October 27, 2010, the day by which their objections were due, plaintiffs filed a compact disc or "CD" containing a number of documents, including correspondence between plaintiffs and various state and federal entities, property records, a newspaper article, and a list of other community rehabilitation programs. The court provisionally placed these materials under seal, but as noted herein now denies plaintiffs' request to seal these documents. Additionally, the court denied a corresponding request for a hearing on the motion for emergency preliminary injunction. In order entered November 12, 2010, the court undertook careful review of plaintiffs' claims, and dismissed them for the reasons therein given, without prejudice. The clerk was directed to close this case.

The combined weight of plaintiffs' recent filings collectively seeks this court to reconsider its decision and, as such the court construes these filings made mention of above collectively as a motion to reconsider. After careful review of plaintiffs' submissions, the court finds no basis so to

do. The court DENIES plaintiffs' motion to reconsider. There being nothing else for the court to decide, the case shall be closed. Plaintiffs' redress, if any, from the court's decisions in this case lies now with the United States Court of Appeals for the Fourth Circuit, to which any appeal must be taken.

SO ORDERED, this the 6<sup>th</sup> day of December, 2010.



LOUISE W. FLANAGAN  
Chief United States District Court Judge